IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 800 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UMARFARUK MAHMADSHAKIR SURTI (CHHIPA) - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR RJ GOSWAMI for Applicant(s) : 1,

Mrs. Hansa B. Punani, ld. A.P.P. for

Respondent(s) : 1,

NOTICE SERVED BY DS for Respondent(s) : 2,

CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 19/10/2005

ORAL JUDGMENT

1. This petition is filed under Article 226 of the Constitution of India with a prayer to quash and set aside the order of externment dated 05.02.2005 passed by respondent no.2 at Annexure-B and the order passed by the appellate authority, respondent no.1 herein dated 16.05.2005 at Annexure-C, on the ground that the exercise of powers under Section 56(b) and under Section 60(3) of the Bombay Police Act, 1951 by respondent no.1 and 2 respectively, is arbitrary and violative of articles 14, 19 and 21 of the Constitution of India.

2. The petitioner was issued show cause

notice dated 21.10.2003 under Section 59 of the Bombay Police Act to show cause as to why he should not be externed from the limit of Police Commissioner of Ahmedabad City and adjoining districts i.e. Ahmedabad Rural, Gandhinagar, Kheda and Mahesana districts for a period of two years as the activities of the petitioner were found detrimental to the public interest and the remedies under this act is only the remedy by which the petitioner can be prevented from indulging into such violent and criminal activities. The concerned authority has relied on the statements of witnesses narrating about illegal activities of the externee, of possessing weapons, indulging into administering threats and creating fear in the public and also extorting money on certain occasion. The first reply was submitted by the petitioner on 05.11.2003 and second reply on 05.01.2004 and the final submissions were made on 18.03.2004. In the

reply, it was submitted that the allegations against the petitioner were not well-founded and even offences registered against the externee, did not warrant exercise of powers under Section 56(b) of the Bombay Police Act.

3. However, the respondent no.2, Deputy Commissioner of Police, Zone-I, Ahmedabad City passed the order of externment on 05.02.2005 by which the petitioner was externed for a period of two years from the jurisdiction of commissionerate of Police, Ahmedabad City and even the adjoining districts of Ahmedabad Rural, Gandhinagar, Kheda and Mehsana on the ground that the externee is likely to continue his illegal activities from the adjoining areas.

An appeal under Section 60 of the Act was preferred on different grounds including a specific plea of delay in passing

the order of externment by the concerned authority and there was about 10 to 11 months of delay from the date of reply to show cause notice. There were other ground mentioned in the memo of appeal but the appellate authority has considered that the offence registered vide C.R.No.11 of 2002 on 14th January, 2002 under the provisions of Indian Penal Code and another offence registered vide C.R.No.3109 of 2002 dated 14.06.2003 under the Bombay Prevention of Gambling Act, 1887, and confirmed the order of externment passed by the externing authority.

4. The learned advocate Abhay Shah, appearing for Shri R.J.Goswami for the externee, has restricted his arguments on the ground of delay in passing the order of externemnt by the externing authority, which has substantially resulted into illegal exercise of powers under Section 56 (b) of the Bombay Police Act. It is contended by the

learned advocate for the externee that show cause notice was issued on 21st October, 2003 and after various submissions on different occasions, final reply was already submitted by the externee on 18th March, 2004 and after unexplained delay of 11 months, the externing authority has passed the impugned order. Such exercise of powers is infact frustrating the provisions of the Act. He has further submitted that even on merit also the externing authority has considered the last offence which was registered on 14th January, 2002 under the provisions of Indian Penal Code and even second offence is under the Bombay Prevention of Gambling Act for which no exercise can be undertaken under Section 56(b) of the Act, unless the externee is convicted in such offences, powers can be exercised u/S. 57 of the Act. He has further submitted that exercise of powers by the detaining authority is arbitrary, unreasonable and violative of

Articles 14, 19 and 21 of the Constitution of India and the orders passed by both the authorities i.e. externing authority as well as the appellate authority, are required to be quashed and set aside.

5. Mrs. Hansa B. Punani, learned A.P.P. has submitted that the delay is not that unreasonable which may vitiate the ultimate action of the externing authority and considering the facts and circumstances of the case, it was submitted by the learned A.P.P. that exercise of powers by the authority is just and fair and also in accordance with law, which do not require any interference of this Court in exercise of powers under Article 226 of the Constitution of India.

6. Having considered the rival submissions and what is evinced from the record, it transpires that show cause notice was given to

the petitioner on 21.10.2003 and after two replies dated 05.11.2003 and 05.01.2004 to the externing authority final reply was submitted as early as on 18th March, 2004 and thereafter the externing authority has passed the order on 5th February, 2005 which clearly shows delay of about 11 months which remain unexplained. Even consideration of the Externing authority of C.R.No.11/2002 and 3109/2003, copies of which were never supplied to the externee and the second offence is also pertaining to the Bombay Prevention of Gambling Act which requires the conviction of the externee for exercising the powers under Section 57 of the Act.

The unexplained delay of 11 months in passing the order of externment by respondent no.2 has frustrated very purpose of the immediate exercise of power under the Act, as the externee is to be externed immediately so as to prevent him from indulging into illegal

activities. The above delay of 11 months in passing the order impugned is fatal and contrary to the law laid down as reported in 1997 Cri.Law Reporter (Guj.) P-139, since it is beyond the prescribed limit of six months for completing the proceedings under the Act.

7. In view of the above discussion and reasons recorded above, petition stands allowed. Both the orders i.e. passed by the externing authority dated 05.02.2005 and the order passed by the appellate authority dated 16.05.2005 confirming the order of externment passed by the externing authority, are hereby quashed and set aside. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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